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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Annual Assessment of the Status of) CS Docket No. 95-61
Competition in the Market for the)
Delivery of Video Programming)

NYNEX COMMENTS

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Telegraph Company

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SUMMARY

The Commission's Notice seeks information for use in preparing the Commission's second annual report to Congress on the status of competition in the market for the delivery of video programming. NYNEX responds herein to various questions in the Notice pertaining to video dialtone, set-top boxes, joint ventures in video programming and interactive services, telephone company investments in wireless cable systems, application of program access rules to LECs, and impediments to competitive entry and recommendations to promote competition. In the first annual report, the Commission found that the market for the distribution of multichannel video programming remains heavily concentrated at the local level, and for most households, cable television is the only provider of multichannel video programming; and cable systems continue to have substantial market power at the local distribution level. Those conclusions, reached by the Commission less than a year ago, remain valid today.

Video dialtone is still a nascent service subject to many evolving marketing, technological and legal/regulatory variables; and alternate video programming distribution systems such as wireless cable are not yet available to a sufficient number of subscribers to create a competitive environment in most video programming markets. The Commission should continue to pursue initiatives to substitute market forces for regulation and break down barriers to full and robust competition in the market for the delivery of video programming. As technology continues to change rapidly, the Commission should adhere to its regulatory flexibility policy with respect to use of different transmission media and different distribution technologies. With sustained Commission support, including streamlined and evenhanded regulation, video dialtone stands to become a viable competitive alternative to cable television service.

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NYNEX COMMENTS

The NYNEX Telephone Companies ("NYNEX")¹ submit these Comments in response to the Commission's Notice of Inquiry ("Notice") released May 24, 1995, in the above-captioned matter.

I. INTRODUCTION AND OVERVIEW

Section 19(g) of the 1992 Cable Act² directs the Commission to report annually to Congress on the status of competition in the market for the delivery of video programming.³ The Notice seeks information for the Commission to use in preparing the second of these annual reports.⁴ NYNEX responds herein to various questions in the Notice pertaining to video dialtone ("VDT"), set-top boxes, joint ventures in video programming and interactive services, telephone company investments in wireless cable systems, application of program access rules to LECs, and impediments to competitive entry and recommendations to promote competition.⁵

¹ The NYNEX Telephone Companies are New York Telephone Company and New England Telephone and Telegraph Company.

² Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), codified at 47 U.S.C. § 521 *et seq.*

³ 47 U.S.C. § 548(g).

⁴ Notice at ¶ 5.

⁵ The Commission notes that: "We are not asking parties to provide the Commission with information that is otherwise publicly available. Nor are we asking parties to repeat here the substance of comments that have been filed in other proceedings." Notice at ¶ 7.

In the first annual report, the Commission found that:

The market for the distribution of multichannel video programming remains heavily concentrated at the local level, and for most households, cable television is the only provider of multichannel video programming. Cable systems continue to have substantial market power at the local distribution level.⁶

Those conclusions, reached by the Commission less than a year ago, remain valid today.

Video dialtone remains a nascent service and alternate video programming distribution systems such as wireless cable are not yet available to a sufficient number of subscribers to create a competitive environment in most video programming markets. While VDT offers the potential to provide viable competition to cable, realization of that potential requires that regulatory burdens be reduced, and that symmetrical treatment be extended to telephone company VDT providers and competitors.

II. **DISCUSSION**

A. **Video Dialtone**

1. **FCC Question:** How will the prices and services offered over VDT networks compare to the prices and services charged by cable operators? How will this comparison change over time? What is the basis for this prediction?⁷

NYNEX Response: It is premature to compare VDT prices and services to cable prices and services, as the only commercial VDT service available under an effective tariff is Bell Atlantic's Dover system. Furthermore, federal legislation may be enacted which deregulates cable prices and/or impacts VDT costs and rates. And, of course, final federal rules affecting VDT in certain areas have yet to be promulgated by the Commission.⁸ Ultimately, if reasoned and symmetrical rules are applied to the video

⁶ Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, First Report, CS Docket No. 94-48, 9 FCC Rcd. 7442 (1994) ("1994 Report").

⁷ Notice at ¶ 53.

⁸ See Docket 87-266 Third FNPRM and Fourth FNPRM, addressed infra.

programming market, fierce competition to cable service is expected to arise from VDT, wireless cable and other alternative video distribution systems. In that environment, the market should be permitted to determine services and prices.

2. **FCC Question:** What are the technological impediments and advantages to the deployment of VDT platforms as competitive alternatives to cable systems?⁹

NYNEX Response: NYNEX anticipates that the technical community, particularly manufacturers, will provide detailed information responsive to this question. From our standpoint, the advantages of VDT are expected to include the capability for feature-rich interactive services, robust capacity enabling multiple video programmers to utilize the platform, and high signal quality. However, VDT technology has not yet been tested in a wide scale commercial setting. As a result, the advantages of the technology are still assumed and any potential impediments have not yet been identified.

On a general level, it is clear that the technology associated with the delivery of video programming will continue to evolve at a rapid pace.¹⁰ This reinforces the need for a flexible approach not only with respect to different transmission media (copper, coaxial, fiber, etc.) but also with respect to use of different distribution technologies (cable, VDT, MMDS, DBS, etc.).¹¹ Carriers should be allowed to utilize various technologies in order to bring advanced video services to consumers and compete with entrenched cable monopolists.

3. **FCC Question:** What is the status of the build-out of systems for which Section 214 authorizations have been granted?¹²

⁹ Notice at ¶ 53.

¹⁰ This is reflected by the steps taken by Bell Atlantic and U S WEST to suspend certain VDT Section 214 applications. See also 1994 Report at ¶¶ 195, 200.

¹¹ Technological advances in digitization and compression are taking place with respect to wireless cable.

¹² Notice at ¶ 53.

NYNEX Response: By Order released March 5, 1995, NYNEX received authorization from the Commission to construct and operate facilities for the provision of VDT service in certain areas of Rhode Island and Massachusetts.¹³ While still in the early stages, NYNEX is moving ahead with preliminary work in the initial build areas of Warwick, Rhode Island and Somerville, Massachusetts. In Warwick, for example, some common equipment (equipment used to provide both telephony and video) associated with the hybrid fiber optic and coaxial network has been put in place. In Somerville, preparatory work such as pole moves and tree trimming necessary to accommodate equipment has been undertaken. In addition, some fiber optic strand placement has been started in Somerville.

4. **FCC Question:** Have the plans for deployment of VDT networks for which Section 214 authorizations have been granted, or the plans for deployment of VDT networks that are the subject of applications currently pending before the Commission, been affected by events since the 1994 Competition Report?¹⁴

NYNEX Response: Key events since the 1994 Report include:

- Court decisions¹⁵ striking down as unconstitutional the telephone company-cable television cross-ownership prohibition.¹⁶ These decisions have been subject to the appeals process including potential review of the issue by the U.S. Supreme Court.
- The Commission's Docket 87-266 Third Further Notice of Proposed Rulemaking ("Third FNPRM") proceeding addressing such issues as VDT channel capacity, channel sharing and preferential access.¹⁷ The Commission has not yet issued a decision in that proceeding.

¹³ Matter of VDT Section 214 Applications of New England Telephone and Telegraph Company, File Nos. W-P-C-6982, W-P-C-6983.

¹⁴ Notice at ¶ 53.

¹⁵ See Notice at ¶ 48 & notes 91-92.

¹⁶ Section 613(b) of Communications Act, 47 U.S.C. § 533(b). See also 47 C.F.R. §§ 63.54, 63.58. The Commission's Cable Services Bureau, Common Carrier Bureau and the Office of General Counsel announced they will no longer enforce the cross-ownership restriction against, inter alia, telephone companies such as NYNEX that are parties to cases in which the Commission is enjoined from enforcing § 613(b). Public Notice, DA 95-520 (March 17, 1995), corrected DA 95-722 (April 3, 1995).

¹⁷ See Notice at ¶ 50.

- The Commission's Docket 87-266 Fourth Further Notice of Proposed Rulemaking ("Fourth FNPRM") proceeding considering changes to the VDT rules in light of the above-referenced court decisions, and considering the extent to which Title II and Title VI of the Communications Act apply to telephone companies providing video programming directly to subscribers in their telephone service areas over VDT facilities.¹⁸ The Commission has not yet issued a decision in that proceeding.
- Current activity on federal telecommunications legislation¹⁹ addressing, inter alia, competition between telephone companies and cable operators in their respective markets. Such legislation has not yet become law.
- Evolving technological advances (as referenced herein).

NYNEX has no doubt that legislative and regulatory events which have occurred since 1994 will affect our VDT plans, and additional changes are still taking place which could affect our plans for deployment of VDT. Legislation may become law which significantly alters the ground rules governing VDT, and/or eliminates the Section 214 process altogether. Furthermore, the Commission's Order in the Third FNPRM may impact NYNEX's VDT analog channel offering. Also, the Commission's Order in the Fourth FNPRM may impact how a NYNEX company provides video programming to be delivered over the New England VDT platform. Importantly, if the Commission treats the NYNEX video programmer as a cable operator subject to Title VI regulation including local franchising requirements, or otherwise promulgates asymmetrical or burdensome rules, there will be a disincentive for telephone companies to invest in wireline broadband technology for video and interactive services. This will thwart or eliminate the Commission's announced goal of deployment of VDT systems competitive with incumbent cable service.²⁰

¹⁸ See *id.*

¹⁹ H.R. 1555 is pending in the U.S. House of Representatives and just this month the Senate passed its version of an overhaul of the Communications Act (Senate Bill 652).

²⁰ See CC Docket No. 87-266, 7 FCC Rcd 5781, ¶¶ 1, 6, n. 104.

5. **FCC Question:** Are there particular market characteristics, such as relatively high population density, that are necessary to support competition between VDT and cable systems? Will this limit competition to certain types of geographic areas, such as large metropolitan areas?²¹

NYNEX Response: Such market characteristics as relatively high population density are helpful but not necessarily critical factors to support competition between VDT and cable systems. The criteria considered by NYNEX in deploying broadband facilities include: widespread deployment; engineering efficiencies; operational cost reductions; market demand; competitive environment; and existing infrastructure/technological feasibility. NYNEX fully expects to provide VDT service on broadband facilities on a wide scale basis, throughout the NYNEX serving area.²² In an effort to bring advanced video services to consumers in our region, NYNEX is evaluating various distribution technologies for possible application in different geographic areas, including urban, suburban and the more sparsely settled areas.

6. **FCC Question:** The Commission notes that in January 1995, Rochester Telephone and USA Video "ended their video-on-demand trial due to lack of customer demand for the services." The Commission asks commenters "to discuss any implications of this development."²³

NYNEX Response: Two main lessons have been learned from the Rochester trial. First, the technology works. According to Mr. Frank Bowden, President and Chief Executive Officer of USA Video: "We were able to deliver the world's first true digital interactive Video-on-Demand system to paying customers."²⁴ Second, there is a need for content-rich service offerings. This highlights the importance of the

²¹ Notice at ¶ 53.

²² See Supplement to NYNEX VDT Section 214 Applications for Rhode Island and Massachusetts, W-P-C-6982, W-P-C-6983, July 29, 1994, pp. 8-9.

²³ Notice at ¶ 54.

²⁴ America Online, January 20, 1995.

interactive entertainment venture backed by NYNEX, Bell Atlantic and Pacific Telesis
(see infra).

B. Set-Top Boxes

1. FCC Question: The Commission invites comment on its statement that: a potential barrier to the implementation of digital conversion is the cost of set-top boxes; consumers must be provided hardware and software needed to process digital signals; and basic digital set-top boxes cost in the range of \$600.²⁵

NYNEX Response: Consumers will not bear the total cost of digital conversion. Video information providers ("VIPs") will need to be competitive with incumbent cable operators in order to attract consumers to their services. The basis of this competition is price and programming content. VIPs are likely to package their offerings to include both content and equipment costs.

Demand growth should reduce set-top costs over time. Also, NYNEX is finding that: a) the cost of a digital set-top box may be in the \$300-\$400 range if a sufficiently large volume commitment is made; and b) more manufacturers are being asked for "forward pricing," in which they smooth the costs of new technology over time, rather than front-loading developmental costs onto the initial product offering.

2. FCC Question: What are the advantages and disadvantages of having subscribers own set-top boxes?²⁶

NYNEX Response: Advantages to the subscriber include: portability, i.e. the subscriber may be able to change location and/or change video providers without changing set-tops (when the platform is compatible); choice, i.e. the subscriber decides upon a set-top box based on price, payment options, quality, esthetics, etc.; and ownership may be less costly than leasing in the long run. Advantages to the video

²⁵ Notice at ¶¶ 6, 67.

²⁶ Id. at ¶ 73.

provider include avoiding requirements for capital outlays, maintaining and tracking inventory and warehousing. Advantages to the manufacturers include the ability to market their products independently.

Disadvantages to the subscriber include: expenditure of time and effort to obtain knowledge on and choose a set-top box; the set-top box chosen may quickly become technologically outdated and may not be compatible with all video operating systems (thus negating any portability advantage); maintenance costs; the requirement of a capital outlay in the range of several hundred dollars; and higher prices from retail margins.

Disadvantages to the video provider include: the requirement for the subscriber to purchase CPE may reduce penetration levels; and a possible inhibiting effect on upgrading services. Disadvantages to the manufacturer include increased risk from: dependence on individual sales without large volume commitments; the need to establish retail distribution channels; and dependence on marketing, sales and promotional efforts to establish critical mass in a new market.

3. FCC Question: What functionalities are included in current set-top boxes?²⁷

NYNEX Response: See Attachment for required functionalities in basic analog set-top boxes.

4. FCC Question: To what extent can set-top boxes be purchased or leased from sources other than cable operators?²⁸

NYNEX Response: To our knowledge, cable operators are currently the dominant source of set-top boxes provided to end users. As the market evolves, it is anticipated that set-top boxes will become a commodity item, and that manufacturers will

²⁷ Notice at ¶ 73.

²⁸ Id.

seek as many distribution channels for their products as possible and offer buy/lease options. Also, set-top functionality will be directly incorporated into various television sets and video monitors.

5. **FCC Question:** To what extent do current market conditions, including Commission rules and regulations, inhibit the development of a competitive market for set-top boxes?²⁹

NYNEX Response: To our knowledge, there is no such inhibition.

C. Joint Ventures In Video Programming And Interactive Services

FCC Question: The Commission seeks comment on the competitive implications of developments such as the NYNEX, Bell Atlantic and Pacific Telesis Group joint venture in the area of interactive video networks.³⁰

NYNEX Response: Last year, NYNEX, Bell Atlantic and Pacific Telesis Group entered into a joint venture to support their entry into video markets. TELE-TV will develop common systems to manage the delivery of one-way and interactive video services. It will also acquire and develop programming for delivery on the VDT and other distribution networks. The three companies will conduct jointly through TELE-TV activities which each is currently permitted to perform. Since the partners have virtually no presence in video markets, this will enable the three companies to compete more effectively against entrenched vertically integrated cable operators/programmers over time. Overall, the effectiveness of the TELE-TV project depends on how fast the partners' video distribution systems gain market share from cable incumbents.

D. Telephone Company Investments In Wireless Cable Systems

FCC Question: The Commission notes "that Bell Atlantic, NYNEX and Pacific Telesis have recently announced plans to invest in wireless cable systems." The Commission solicits comments on the competitive impact of such investments by telephone companies.³¹

²⁹ *Id.*

³⁰ *Id.* at ¶ 55.

³¹ *Id.* at ¶ 32.

NYNEX Response: The joint investment by NYNEX and Bell Atlantic in CAI Wireless Systems, a multichannel multipoint distribution service (MMDS) provider, will speed the delivery of video entertainment and information services to consumers. Wireless is one of a number of different distribution technologies that telephone companies may use to bring video services to consumers. Here again, telephone companies need the flexibility to use whatever technology or mix of technologies is needed to quickly enter the market and compete most effectively with incumbent providers. For the telephone companies, the partnership will provide an opportunity to offer video services to a broad audience much sooner than otherwise possible, which in turn will build value for the TELE-TV media and technology venture. For CAI, the investment by the telephone companies provides the needed capital to upgrade existing equipment and deploy additional wireless systems.

E. Application Of Program Access Rules To LECs

FCC Question: Should the program access rules³² apply to LEC access to cable programming when a LEC is offering multichannel video programming service in competition with a franchised cable system, whether through the VDT framework or a franchised overbuilt cable system? Should the program access rules apply to LECs' programming in such situations?³³

NYNEX Response: NYNEX showed in its pleadings submitted in response to the Docket 87-266 Fourth FNPRM that Title VI, which includes the program access rules, does not apply when programming is provided by an affiliate of the common

³² Section 19 of the 1992 Cable Act prohibits unfair competitive practices by vertically integrated satellite cable programming vendors, satellite broadcast cable programming vendors, and cable operators, including certain limits on exclusivity provisions in cable carriage agreements. To implement this section of the 1992 Cable Act, the Commission adopted rules to prevent discriminatory behavior and restrict the types of exclusive contracts that may be entered into between cable operators and vertically integrated program vendors, i.e. the "program access rules." Notice at ¶ 87.

³³ Notice at ¶ 90.

carrier VDT provider, as planned by NYNEX. When a LEC is a cable operator, the program access rules would apply.

F. Impediments To Competitive Entry And Recommendations To Promote Competition

FCC Question: The Commission invites comment on barriers to entry into the market for the delivery of video programming, and on ways to foster a competitive market.³⁴

NYNEX Response: In a number of recent Commission proceedings, NYNEX has presented its position on issues relating to promoting competition in the market for the delivery of video programming.³⁵ In brief, with the overruling of the ban on RBOC video programming in their telephone service areas, the Commission is presented with a unique opportunity. It can oversee the emergence of full competition in a field long dominated by non-common carrier cable operators who have been the sole providers of service in their areas of operation. It has the opportunity to permit competition to develop without unnecessary new regulations that might unduly burden both the new entrants and the entrenched cable operators. It already has in place the safeguards that will allow for full and fair competition. The Commission should, wherever possible, allow market forces and competition to shape the development of the industry and only where a need is shown, should the Commission intervene.

III. CONCLUSION

Cable operators continue to possess substantial market power, while video dialtone is still a nascent service subject to many evolving marketing, technological and

³⁴ Id. at ¶¶ 93-96.

³⁵ See, e.g., NYNEX's filings in the following proceedings: CC Docket No. 87-266, Fourth FNPRM, released January 20, 1995; CC Docket No. 87-266, Request for Supplemental Comments On Possible Grant of Blanket Section 214 Authorizations, Public Notices issued March 17, 1995 (DA 95-529) and April 3, 1995 (DA 95-665); and CC Docket No. 94-1, Treatment of Video Dialtone Services Under Price Cap Regulation, FNPRM released February 15, 1995.

legal/regulatory variables. The Commission should continue to pursue initiatives to break down barriers to full and robust competition in the market for the delivery of video programming. With sustained Commission support, including streamlined and evenhanded regulation, video dialtone stands to become a viable competitive alternative to cable television service.

Respectfully submitted,

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ATTACHMENT TO NYNEX COMMENTS (CS DOCKET NO. 95-61)

Functional Requirements For Analog Only Set-Top Boxes

A purely analog set-top box is required to support non-cable ready televisions. This set-top box must provide the following minimum set of features and functionality:

1. 54-550 MHz bandwidth
2. AFC circuitry built-in
3. Support for 82 channels (2-83)
4. Surge protection for both AC and RF input
5. Non-switched AC outlet (in rear of unit)
6. RF output modulated to channels 3 or 4 (rear of unit)
7. Front panel channel display (3 digit LED/LCD)
8. Built-in A/B switch (to switch between cable system and alternate antenna)
9. Control buttons on the face of set-top box to support:
 - channel selection
 - power
10. Infrared receiver and hand held universal remote transmitter
11. The following features will be native to the box:
 - Last channel recall when turned on
 - Support for channel display, station identity
12. Support for Barkers, EBS, and Closed Caption Formatting
13. Approximate weight 6 lbs.
14. Dimensions approximately 11"L x 9"W x 4"H